

# **Medallion Taxicab Technology Enhancements Service Agreement**

**By and between**

**The City of New York**

**and**

**VeriFone Transportation Systems Inc.  
d/b/a Taxitronic**

*Effective as of*  
**December \_\_, 2005**

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This MEDALLION TAXICAB TECHNOLOGY ENHANCEMENTS SERVICE AGREEMENT between THE CITY OF NEW YORK (the "City"), acting by and through the Taxi and Limousine Commission, 40 Rector Street, New York, New York ("TLC"), and VeriFone Transportation Systems Inc, D/B/A Taxitronic (the "Contractor"), a New York corporation having its principal offices at 36-15 13<sup>th</sup> Street, Long Island City, NY 11106. This Agreement becomes effective on the Effective Date.

## 1 BACKGROUND

The City issued a request for proposal for the NYC Medallion Taxicab Technology Enhancements Project (the "RFP") on March 2, 2005. In response, Contractor submitted a proposal on or about June 6, 2005, and a best and final offer on August 10, 2005. Based on the Proposal, the City and Contractor have engaged in negotiations that have culminated in the formation of the relationship described in this Agreement. In consideration of the mutual promises and covenants contained in this Agreement, both Parties agree to the following:

## 2 DEFINITIONS

Whenever used in this Agreement, the words and phrases listed below shall have the meanings given below. Capitalized terms not otherwise defined in this Section 2 shall have the meanings ascribed to them elsewhere in this Agreement. The terms defined in this Section 2 include the plural as well as the singular. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection. "Article," "Section" or "Subsection" references refer to articles, sections and subsections of the Master Agreement or referenced Attachment. The word "or" shall mean "and/or" unless the context requires otherwise. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year, and the words "writing" or "written" mean preserved or presented in retrievable or reproducible form, whether electronic (except for voice mail) or hard copy, unless otherwise stated.

**"24x7x365 Basis," "24x7"** or similar words shall mean a level of effort provided by Contractor that causes the applicable Service or System component to be made available to the TLC twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, without regard to local, national, international or other holidays or events.

**"311 Service"** shall mean services and information related to government information and non-emergency services provided by the City, an Agency or their designees in response to a telephone call to the 311 call center (*i.e.*, by dialing "311" from a telephone connected to the public switched telephone network in New York City).

**"Acceptance Certification"** shall mean the certification to be provided by a Contractor officer in accordance with Section 4.4.2 (Final Acceptance Verification).

**“Acceptance Criteria”** shall mean, collectively, (a) the criteria used to determine whether the Taxicab System satisfies the applicable Requirements and (b) the criteria used to determine whether the System (as an integrated whole) satisfies the Requirements. The Acceptance Criteria include the Specifications, Requirements and other test scripts and criteria set forth in Attachment ATC (Acceptance Test Criteria).

**“Acceptance Period”** shall mean the period of time set forth in the Acceptance Test Plan during which the Acceptance Test shall occur.

**“Acceptance Test”** shall mean the tests of the System and all of its components to be used by the Parties to determine whether the System, or its Software, Hardware and Network components perform in accordance with the Acceptance Criteria.

**“Acceptance Test Plan”** shall mean the Acceptance Test activities, responsibilities and Milestone Dates described in Attachment ATP (Acceptance Test Plan).

**“Acceptance Test Procedures”** shall mean the test procedures, methodologies, Tools, and scripts adopted by the Parties in accordance with Section 4.3.1 (Development of Acceptance Test Procedures) to implement the Acceptance Test Plan.

**“Acceptance Test Stage”** shall mean the applicable portion of the Acceptance Test described in Attachment ATP (Acceptance Test Plan).

**“Access”** shall mean the ability to (a) retrieve information or data from, or submit commands, data or information to the subject, (b) transmit or receive commands, data or information from the subject, (c) transfer information or data from or to the subject, or (d) read from or write to the subject. Access shall include, without limitation, the ability to interact with the Software or any database management system that is part of the System (i) directly using a user interface(s) associated with the server(s) and personal computer(s) on which the Software is installed or (ii) remotely via the Internet, the TLC's local area network, wide area network, or any other data network used by the TLC.

**“Actual Service Commencement Date”** shall mean the date that Contractor is actually authorized to solicit to provide and actually provide Owner Base Services to Owners pursuant to Section 6.2 (Service Commencement and Owner Procurement).

**“Adverse Change”** shall mean any Change to the Services or the System that (a) materially and adversely affects the Services or the System, (b) causes the TLC or Owners to incur material additional costs for, or in connection with, the Change, (c) prevents proper operation of any TLC-Provided Resource, or (d) prevents the Services or the System from meeting any applicable Service Levels or Requirements.

**“Affiliate”** shall mean, with respect to Contractor, any corporation, partnership, joint venture or other business entity that Controls, is Controlled by or is under common Control with Contractor.

**“Agency”** shall mean any regulatory or administrative division, department or office of the City.

**“Agreement”** shall mean, collectively, (a) the Master Agreement, (b) the Attachments incorporated expressly herein, and (c) the other documents expressly incorporated herein by reference.

**“Appendix A”** means the “General Provisions Governing Contracts for Consultants, Professional and Technical Services” referenced in and appended to this Master Agreement as Appendix A and made a part hereof.

**“Attachment”** means any attachment (including Appendix A) referenced in and appended to this Master Agreement and made a part hereof.

**“Attack”** means any attempt or attempts by persons, entities, software, hardware, systems or networks to access any portion of the TLC-Provided Resources, Hardware, Software, Networks or other portion of the System without the express prior written authorization of the TLC, or any other deliberate or knowing act that denies the access to, or use of, all or any portion of the System.

**“Authorized Contractors”** means the vendors (and their subcontractors) that the TLC approves, in writing and in its sole discretion, to offer certain services and products to Owners as the result of proposals submitted, and work performed, by such vendors in response to the RFP.

**“Best and Final Offer”** is defined in the City of New York Procurement Policy Board Rules, which are incorporated herein by reference. The Best and Final Offer was submitted by Contractor to supplement its initial Proposal.

**“Best Efforts”** shall mean taking steps and performing in a manner consistent with the undertaking of a well managed business acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own benefit.

**“Beta Taxicab System”** means a test Taxicab System designed and built by Contractor to demonstrate that the Contractor’s technical solution for the Taxicab System will deliver the features and functionality to Drivers and Passengers in conformance with the Acceptance Criteria.

**“Chairperson”** shall mean the chair of the TLC designated by the Mayor in accordance with the New York City Charter.

**“Change(s)”** shall mean any change to the Services or the System made after the TLC issues the Notice to Proceed or any change to the Requirements made at any time that would materially alter the following: (a) functionality, performance characteristics, security measures, or technical environment of the System; (b) interfaces to the Software, Hardware, Network or other System components; (c) the manner in which the Services or System are provided; (d) the manner in which the TLC, Drivers, Owners or Passengers use the System or Services; or (e) the composition of the Services or System.



**"Compliance Date"** is defined in Section 6.2.6.

**"Contractor Account Manager"** shall mean the Contractor employee or Contractor Agent employee who shall perform the responsibilities and tasks described or referenced in Section 8.4.2 (Account Management).

**"Contractor Advisory Committee"** shall mean the committee comprised of representatives from the TLC, Passengers and each Authorized Contractor described in Section 8.1 (Contractor Advisory Committee).

**"Contractor Agents"** shall mean the employees, Affiliates, contractors, subcontractors, suppliers, agents, counsel, consultants, representatives and invitees of Contractor who perform or provide any portion of the Services or the System.

**"Contractor Pre-Existing Work"** shall mean all Intellectual Property conceived, developed, fixed in tangible form or reduced to practice by or on behalf of Contractor or any Contractor Agent (a) on or prior to the Effective Date but not specifically in response to the RFP; or (b) after the Effective Date but is developed independently from Contractor's performance of the Services hereunder.

**"Contractor Standard of Care"** shall mean the requirement that Contractor, in performing under this Agreement, exercise the judgment, and perform (directly and through Contractor Agents) in the manner and to the level of competent, efficient, experienced, and independent equipment, software and service providers and managers.

**"Control"** (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or exercise a controlling influence over the management or policies of such entity, whether through the ownership of voting securities or beneficial interests, by contract, or otherwise.

**"Credit and Debit Card Services"** shall mean the portion of the Services and System used to process Passenger credit card, debit card or prepaid card (when and if prepaid cards are authorized by the TLC) transactions via the Taxicab System.

**"Critical Performance Failure"** shall mean a Performance Failure that rises to the level of a material breach of Contractor's obligations under this Agreement. Certain Critical Performance Failures are expressly set forth in Attachment SLA (Service Levels).

**"Day-2 Services"** means the services, functions and responsibilities (other than the Owner Base Services) to be performed by Contractor for the benefit of the TLC on or after the Actual Service Commencement Date (*i.e.*, the post-implementation Services). The Day-2 Services are described herein and in Attachment TSS (Description of TLC System Services). Day-2 Services also include any services, functions or responsibilities not specifically described in this Agreement, but which are required for the proper performance and delivery of the services specifically described in this Agreement.



**“Deliverable(s)”** shall mean Hardware, Software, Systems, Networks, documentation, reports, studies, information and other Work Product (in all appropriate forms or media) provided to the TLC and developed by Contractor (or Contractor Agents) under this Agreement.

**“Deputy Commissioner”** shall mean a Deputy Commissioner (or a person with equivalent title or responsibility) of the TLC or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

**“Detailed System Design Document”** shall mean a written document that, in accordance with Section 4.3.2 (Development Process), describes the design of the System, including the Taxicab System.

**“Development Services”** means the Services described in Section 4.3 (System Development and Testing).

**“DR Plan”** means the disaster recovery plan used by Contractor to provide the Services, as further described in Section 4.9 (Disaster Recovery).

**“Driver”** means anyone that (a) holds a valid license to drive a Taxicab issued by the TLC and (b) actually operates a Taxicab.

**“Effective Date”** shall mean the date that this Agreement is signed by the Parties; *provided, however, that* the Effective Date is conditioned upon registration of this Agreement with the Comptroller of the City of New York.

**“Emergency PSA”** shall mean a PSA issued to address an imminent public health, safety or welfare concern.

**“Executive Steering Committee”** shall mean the committee comprised of executive and senior level management from the TLC and Contractor described in Section 8.2 (TLC-Contractor Steering Committee).

**“Functional System Description”** shall mean a written document that, in accordance with Section 4.3.2 (Development Process), describes the features and functions of the System, including the Taxicab System.

**“Governmental Authority”** shall mean any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, international, or foreign, including any Agency.

**“Hardware”** shall mean equipment or machinery, together with all associated components, media, firmware and other embedded software and instructions provided, operated or maintained by or for Contractor or Contractor Agents pursuant to this Agreement.

**“Implementation Plan”** means the description of the responsibilities, tasks, and Deliverables that is associated with the development, integration, acceptance testing and deployment of the System and is

prepared by Contractor in accordance with Attachment SCH (Implementation Schedule).

**"Implementation Project Manager"** shall mean the Contractor employee or Contractor Agent employee who is responsible for managing the implementation-related activities in accordance with Sections 4.2 (Implementation) and 8.4.1 (Implementation Project Manager).

**"Implementation Schedule"** shall mean the schedule of milestones and associated Deliverables described in the Attachment SCH (Implementation Schedule).

**"Implementation Services"** are described or referenced in Section 4.2 (Implementation).

**"Improvements"** shall mean any developments, including new developments in Intellectual Property, Hardware and Software that could reasonably be expected to have an impact on the New York City taxicab industry, to the extent known and made available within or by Contractor.

**"Include"** and **"including"** whether or not capitalized, shall not be construed as terms of limitation. They mean "including, without limitation".

**"Information Security Requirements"** means the security policies, procedures, requirements, directives and responsibilities in Attachment SEC (DOI Information Security Requirements).

**"Initial Term"** is defined in Section 9.1 (Initial Term).

**"Intellectual Property"** shall mean any (a) processes, methodologies, procedures, (b) software, tools and machine-readable texts and files, (c) literary works or other works of authorship, including documentation, reports, drawings, charts, graphics and other written documentation, and (d) products or materials in which a party possesses Intellectual Property Rights.

**"Intellectual Property Rights"** shall mean each of the following throughout the world: (a) registered and unregistered copyrights and all derivative works thereof; (b) pending and issued patents (including all reissues, reexaminations, divisionals, continuations, and continuations-in-part); (c) mask works and trade secrets as defined by applicable Law; (d) trademarks and service marks, and (e) all other intellectual property rights enforceable under the Laws of the United States, the State of New York or any other jurisdiction where Services are used or from which Services are provided.

**"Law"** shall mean any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any Governmental Authority.

**"Losses"** shall mean any and all damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments) and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable fees and

expenses of litigation or other proceedings or of any claim, default, or assessment).

**“Malicious Code”** means the following: (a) any code, program, or sub-program whose knowing or intended purpose is to (i) cause the loss of or damage to data, (ii) damage or interfere with the operation of the computer system or network containing or running the code, program, or sub-program, or (iii) halt, disable or interfere with the software, code, programs, or sub-programs, (except for abnormal end (“ABEND”) routines performing as intended in accordance with applicable Specifications); or (b) any device, method, or token that permits any user to circumvent the normal security of the Software or the System. Malicious Code does not include code, programs or sub-programs whose purpose is to perform functions at the discretion of the TLC consistent with good operating practices and standard procedures and in accordance with the applicable Specifications.

**“Management Committee”** shall mean the committee of representatives from Contractor and the TLC described in Section 8.3 (Management Committee).

**“Master Agreement”** means the terms and conditions expressly set forth in this Medallion Taxicab Technology Enhancements Service Agreement by and between the City of New York and Contractor.

**“Maximum Non-recurring Charges”** mean the maximum non-recurring and other one-time charges and fees (as described in Section 6.3 (Maximum Prices Payable by Owners)) that Contractor and any Contractor Agent may charge an Owner for the acquisition and use of a Taxicab System and Owner Base Services provided in support of such Taxicab System.

**“Maximum Prices”** mean the maximum rates, charges and fees Contractor and any Contractor Agent may charge any Owner for the Owner Base Services. The Maximum Prices are generally described in Section 6.3 (Maximum Prices Payable by Owners).

**“Maximum Recurring Charges”** mean the maximum recurring charges and fees (as described in Section 6.3 (Maximum Prices Payable by Owners)) that Contractor and any Contractor Agent may charge Owners in any month during the term of the applicable Owner-Contractor Contract for the acquisition and use of a Taxicab System and Owner Base Services provided in support of such Taxicab System.

**“Maximum Total Cost”** means the maximum of all charges and fees that Contractor and any Contractor Agent may charge an Owner for the acquisition and use of a Taxicab System and Owner Base Services provided in support of such Taxicab System as described in Section 6.3 (Maximum Prices Payable by Owners).

**“Medallion”** means a transferable license issued by the TLC that authorizes a vehicle to be used in New York City to pick up Passengers in response to street hails.

**“Medallion Agent”** means an individual, partnership or corporation acting, by employment, contract or otherwise, on behalf of one or more Owners to operate or provide for the operation of a Taxicab in accordance with the TLC’s rules, regulations and directives. The term “Medallion Agent” shall not include an attorney or representative who appears on behalf of one or more Owners before the TLC or an administrative tribunal, and Drivers.

**“Media”** shall mean reporters, editorialists, editorial staff members, editorial assistants, freelancers, stringers, interns, production aides, assignment editors, producers, field producers or camerapersons representing any newspaper, newsletter, magazine, direct mail newsletter, trade paper, e-newsletter, web logs (blogs), broadcast news outlet (amateur or professional, radio, television, web cast or pod cast).

**“Migration Plan”** shall mean a plan for the transition of the Services from Contractor to the TLC or the TLC’s designee upon termination or expiration of this Agreement.

**“Milestone Date”** shall mean a date identified in the Implementation Schedule or Acceptance Test Plan when certain System development or Implementation Service related events or Deliverables will be completed.

**“Network”** means the wired and wireless communication facilities and equipment (including routers, wireless gateways, antennas, receivers, and interface cards), designed, operated and integrated to (a) interconnect the components of the System, (b) allow Passengers and Drivers to access and use the Taxicab System, (c) enable Owners to use the Owner Base Services, (d) permit the TLC to access and use the System and TLC System Services, and (e) enable Contractor to provide the Services and operate, maintain and manage the System, all in accordance with this Agreement and the applicable Owner-Contractor Contracts.

**“New Services”** shall mean any service or product available from Contractor or Contractor Agents that is not within the scope of the existing Services or System.

**“Notice to Proceed”** shall mean the notice issued by the TLC that conditionally authorizes Contractor to offer the Taxicab System and Owner Base Services to Owners in accordance with Sections 4.4.3 (Deployment of Owner Base Services) and 6 (Owner-Contractor Contracting Process).

**“Offer Documentation”** is the marketing and sales material Contractor may use to solicit Owners or Medallion Agents to provide Owner Base Services as described in Section 6.1.3.

**“Optional Service(s)”** means services Contractor may offer to provide to Owners that (a) are outside the scope of the Owner Base Services, and (b) deliver features, functions or enhanced levels of performance that exceed those provided as part of the Owner Base Services.

**“Outage”** shall mean a condition when the System or any component of the System managed, maintained or operated by or for Contractor or any Contractor Agent, including any Taxicab System, fails to meet the

applicable Service Levels or fails to substantially comply with the Specifications or Requirements. For any Outage not attributable to Hardware and Software installed in a Taxicab, such Outage begins when Contractor first becomes aware of the failure. For any Outage attributable to Hardware and Software installed in a Taxicab, such Outage begins when Owner or a Medallion Agent makes the affected Taxicab available for repair at a Contractor Facility. Outages end when the affected Service component(s) is again operating in substantial conformance with the Specifications, Requirements and Service Levels. An Outage shall not include periods of unavailability that occur during scheduled maintenance windows (as agreed upon by the Parties or, if applicable, Contractor and an Owner) or as the result of a *Force Majeure* Condition.

**“Owner”** shall mean an individual, partnership or corporation licensed by the TLC to own and operate one or more Taxicabs.

**“Owner Base Services”** means the services, functions and responsibilities and portion of the System described in Attachment OBS (Description of Owner Base Services), and any services, functions or responsibilities provided for the benefit of Owners not specifically described in Attachment OBS (Description of Owner Base Services), but which are either described in the Proposal or required for the proper performance and delivery of the Owner Base Services specifically described in this Agreement or an applicable Owner-Contractor Contract. Owner Base Services include providing Hardware, Software, Networks and other components of the Taxicab System in accordance with the Owner-Contractor Contract Form.

**“Owner-Contractor Contract”** shall mean an Owner-Contractor Contract Form (including any exhibits, agreements or other documents incorporated expressly therein) that is entered into by and between Contractor and an Owner (or a Medallion Agent on behalf of an Owner) in accordance with this Agreement.

**“Owner-Contractor Contract Form”** shall mean the form of agreement in Attachment OCF (Owner-Contractor Contract Form), which shall be used by Contractor and Owners (and, if applicable, Medallion Agents) to enable Contractor to provide and Owners to purchase the Owner Base Services in accordance with this Agreement.

**“Owner Data”** shall mean information and data that pertains to Owner’s management or operation of its Taxicab-related business and is (a) provided to Contractor or Contractor Agents by or for Owner, (b) provided to Owner or an Owner Agent by or for Contractor, or (c) accessible by Contractor.

**“Parties”** shall mean the City (acting through the TLC) and Contractor, collectively.

**“Party”** shall mean the City (acting through the TLC) or Contractor.

**“Passenger(s)”** means any individual that, in exchange for an express or implied commitment to pay the appropriate fare, rides in a Taxicab.

**“Performance Bond”** is defined in Section 10 (Performance Security).

**“Performance Credits”** shall mean financial credits applied to service charges or payments due from Contractor to the affected Owners in response to a Performance Failure.

**“Performance Failure”** shall mean the occurrence of an event that causes the Services or the System to fail to satisfy any Service Level pursuant to Attachment SLA (Service Levels).

**“Personal Information”** is defined in Section 11.2 (Protected Personal Information).

**“PIM”** or **“Passenger Information Monitor”** is an audio-visual device, similar to a laptop screen, to be provided by Contractor to Owners as part of the Owner Base Services. The PIM presents certain information to, and processes inputs from, Passengers in accordance with this Agreement and the Owner-Contractor Contracts.

**“PIM System Component”** shall mean the PIM and associated Hardware, electronics, Software, software logic, and any memory or processing modules required to present information to, and interact with, Passengers.

**“Procedures Manual”** shall mean a comprehensive description of how Contractor shall perform the Day-2 Services, including (a) a description of the Hardware, Software and Tools to be used in connection with the Services and System, (b) the operations manuals, user guides and other documentation providing further details about the Services and the System; and (c) procedures to be used by the TLC and Contractor to interact with each other and the System.

**“Proposal”** means Contractor’s proposal submitted to the TLC in response to the RFP on or about June 6, 2005, as modified by Contractor’s Best and Final Offer submitted to the TLC on or about August 10, 2005. The Proposal is incorporated herein as Attachment PRO (Proposal).

**“PSA”** shall mean a governmental public service announcement to Passengers or Drivers from the TLC, the City or any other Agency.

**“Related Documentation”** shall mean, with respect to Software and Tools, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions, and other written information that describes the function and use of such Software or Tools, as applicable.

**“Renewal Term”** shall mean the optional extensions of the Initial Term available to the TLC, in its sole discretion, under Section 9.2 (Renewal).

**“Reports”** shall mean the periodic reports described in this Agreement, in an electronic format compatible with Internet Explorer or the Microsoft Office suite of software products, that will be prepared by or for Contractor



and its Agents and delivered to the TLC in accordance with the provisions set forth herein.

**“Required Consents”** shall mean the licenses, consents, authorizations and approvals that are necessary for use of (a) the Hardware, Software, Network and other portions of the System, (b) the TLC System Services, (c) Contractor-provided Intellectual Property, (d) TLC-Provided Resources, or (e) any assets owned or leased by Contractor used to provide the Services or the System.

**“Requirements”** shall mean (a) the description of the TLC-required features, functions and performance characteristics for the Services and the System (including certain components of the System) set forth in Attachment TSS (TLC System Services), and Attachment OBS (Description of Owner Base Services), (b) the Information Security Requirements, and (c) the environmental, interface, compatibility and other operational requirements applicable to the Hardware, Software or Network elements, including the requirements provided in writing by manufacturers, licensors or providers of such Hardware, Software or Network elements.

**“RFP”** is defined in Section 1 (Background), and is attached hereto as Attachment RFP (Request for Proposal).

**“Scheduled Service Commencement Date”** shall mean the earliest date that the TLC shall permit any Authorized Contractors to solicit to provide or actually provide Owner Base Services to Owners. The Scheduled Service Commencement Date is set forth in the Implementation Schedule, which may be extended by the TLC, in its sole discretion, on not less than five (5) days' prior written notice to Contractor and the other Authorized Contractor candidates. The Scheduled Service Commencement Date shall be the same for all Authorized Contractors.

**“Security Hole”** means anything inherent in a piece of Hardware or Software module that, in the course of its normal use, results in a security vulnerability in the System that could be exploited by a knowledgeable adversary to the detriment of the TLC, or any TLC Representative, Owner or Passenger using or accessing the System or Services. This includes coding errors, or bugs; unintended or undocumented side effects affecting security; anything that would subvert documented security features; and any design problems or features that could leave such product open to misuse in ways not obvious from the documentation provided for such product. A Security Hole does not include the presence or absence of explicit security features.

**“Service Levels”** shall mean the designated levels of quality and performance for the Services and the System set forth in Attachment SLA (Service Levels) that Contractor shall attain and maintain during the Term.

**“Services”** shall mean the Owner Base Services, TLC System Services, and New Services subsequently added to the Services pursuant to Section 4.12.1 (New Services).



**“Sign-Up Deadline”** shall mean the date set by the TLC by which all Owners must enter into contracts with Authorized Contractors for the procurement of taxicab technology enhancements under the Taxicab Technology Enhancement Program.

**“Software”** shall mean the object code versions of any applications, programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications, programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, Improvements, Updates and releases thereof.

**“Specifications”** shall mean the (a) applicable written technical or performance specifications provided, recommended or required by applicable Hardware manufacturers, providers, or lessors; (b) applicable written technical or performance specifications provided, recommended or required by applicable Software developers, providers, or licensors; (c) the Functional System Description and the Detailed System Design Document; and (d) the Service Levels.

**“Staging Environment”** shall mean the test or laboratory environment developed and operated by Contractor as described in Section 4.12.3 (Staging Environment).

**“System”** shall mean the Hardware, Software, Networks, databases, database management systems, and other Intellectual Property, appropriately integrated, interfaced and inter-operable, to work together to provide the Services.

**“Taxicab”** means any vehicle subject to a valid Medallion during the Term.

**“Taxicab Advisory Board”** shall mean a board organized under the authority of the TLC comprised of individuals approved by the Chairman.

**“Taxicab System”** means the Hardware, Software, Network and other portions of the System installed in Taxicabs or used to deliver Owner Base Services for the benefit of Passengers (e.g., the PIM) or Drivers.

**“Taxicab Technology Enhancement Program”** is defined in Section 3.1.6.

**“Term”** means the Initial Term as extended by the applicable Renewal Term(s).

**“Termination Assistance Period”** shall mean the period of time that Contractor is obligated to provide termination assistance under Section 9.6 (Termination Assistance).

**“Termination Assistance Services”** shall mean the Services that Contractor is obligated to provide to the TLC and Owners (or, if applicable, Medallion Agents) under Section 9.6 (Termination Assistance) in order to

facilitate an efficient migration of Services and the System away from Contractor upon the expiration or earlier termination of this Agreement.

**"Third Party"** is any entity or individual that is not a Party, a TLC Representative or Contractor Agent. Use of this term does not imply or create any beneficial or enforceable rights in this Agreement in favor of any such entity.

**"Third-Party COTS Software"** shall mean Third-Party Software that is available to the public on a commercial-off-the-shelf basis.

**"Third-Party Providers"** shall mean a Third Party that provides any equipment, software, networks, systems or other services to the TLC, but excluding Contractor Agents to the extent providing Services or portions of the System at Contractor's direction pursuant to this Agreement.

**"Third-Party Software"** is any Software used to provide Services pursuant to a license by a Third Party for the benefit of Contractor or the TLC.

**"TLC Content"** is content that is produced by the TLC and submitted to Contractor or the System by the TLC for presentation to Passengers via the PIM. TLC Content is further defined in Section 2.2.1 (TLC Content) of Attachment PIM (PIM Content).

**"TLC Data"** shall mean all data and information (a) submitted to Contractor or Contractor Agents by or on behalf of the TLC or the City, or (b) pertaining to the TLC, the City, other TLC Representatives, Owners, Medallion Agents, Drivers, Taxicabs or the New York City taxicab industry that (i) is obtained, accessed, developed or produced by Contractor or Contractor Agents in support of its rendering of TLC System Services and (ii) Contractor or any Contractor Agent provides, or is obligated hereunder to provide, to the TLC or any TLC Representative. For the avoidance of doubt, trip sheets and Taxicab location information (if any) obtained by the TLC via the Taxicab System and text messages from or to the TLC shall be considered TLC Data and Owner Data.

**"TLC Facilities"** a facility or location that is owned, leased or under the control of the City, the TLC or any other Agency where the TLC may receive Services or access the System.

**"TLC Program Manager"** shall mean the TLC Representative designated by the TLC to act on behalf of the TLC in accordance with Section 8.5 (TLC Program Management).

**"TLC-Provided Resources"** means the software, equipment, hardware and network components expressly identified in Attachment TPR (TLC-Provided Resources) and generally described in Section 4.6.2 (TLC-Provided Resources).

**"TLC Representative"** shall mean the City, any Agency, or the City's, TLC's or other Agency's employees, agents, officers, counsel, consultants, contractors, vendors, and sub-contractors, or other business invitees authorized by the TLC from time-to-time to use or access the

Services or the System pursuant to this Agreement. Except for persons authorized expressly under this Agreement to act on behalf of the TLC, the TLC shall provide Contractor with written notice prior to authorizing any TLC Representative to enter into any legally binding obligation on behalf of the TLC or the City, specifying any restrictions on such authorization. The process for adding or removing any TLC Representative may be further described in the Procedures Manual. TLC Representatives shall not include any other Authorized Contractor unless the Parties agree in writing to allow such Authorized Contractor to use or access the Services or System.

**"TLC System Services"** means the responsibilities, functions and services (other than the Owner Base Services and Optional Services) to be provided to the TLC that are described in this Agreement (including the services, functions, responsibilities and projects described in Attachment TSS (Description of TLC System Services)), and any services, functions or responsibilities not specifically described in this Agreement, but which are either described in the Proposal or required for the proper performance and delivery of the services specifically described in this Agreement. TLC System Services include the Development Services, Implementation Services, and Day-2 Services.

**"Tools"** shall mean any software agents, performance testing tools, know-how, methodologies, processes, technologies, or algorithms and Related Documentation used by Contractor in providing the Services that are based upon trade secrets or proprietary information of Contractor or otherwise owned or licensed by Contractor.

**"Updates"** are defined in Section 4.7 (Technology Currency).

**"Work Product"** is defined in Section 13.3 (Work Product).

### **3 PURPOSE, FRAMEWORK AND CONSTRUCTION**

#### **3.1 Purpose**

- 3.1.1 The City has selected Contractor to provide the Services and System as described herein. This Agreement documents the terms and conditions under which Contractor agrees to develop, integrate, implement, provide, operate, and maintain the System and the Services.
- 3.1.2 The Services and the System detailed in this Agreement shall be developed, integrated, implemented, provided, operated and maintained by Contractor at no cost to the City or the TLC.
- 3.1.3 This Agreement also establishes maximum pricing, quality of service requirements and other terms and conditions that govern Contractor's provision of the Owner Base Services to Owners.
- 3.1.4 Contractor acknowledges that the TLC intends to contract with multiple vendors to obtain services and products described in the RFP. The

TLC's objective, which Contractor agrees not to interfere with or frustrate, is to create an efficient market place that enables Authorized Contractors to have a fair and impartial opportunity to compete with each other to provide their respective solutions directly to Owners.

- 3.1.5 The TLC shall (a) use reasonable efforts to investigate legitimate complaints of unfair or anti-competitive conduct (including conduct described in Section 17.2.3 (Anti-competitive Conduct)) by Contractor or any other Authorized Contractor submitted to the TLC Program Manager in writing and (b) in the TLC's sole discretion, exercise remedies available to the TLC to redress such conduct. The TLC may, on its own initiative, investigate any allegedly unfair or anti-competitive conduct (including conduct described in Section 17.2.3 (Anti-competitive Conduct)) by Contractor or any other Authorized Contractor that the TLC becomes aware of, and the TLC may exercise remedies available to the TLC to redress such conduct.
- 3.1.6 The program outlined in this Section 3.1 and generally described in the RFP shall be referred to as the "Taxicab Technology Enhancement Program."

### 3.2 Interpretation

- 3.2.1 To the extent that the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed consistent with the provisions of this Section 3.
- 3.2.2 If there is any inconsistency between terms of this Master Agreement and any of the Attachments or other documents referenced in this Agreement (whether such documents are created before or after the execution of this Agreement), the following order of precedence (in descending order of priority) shall apply:
1. The Master Agreement;
  2. Attachment SLA (Service Levels), Attachment ATC (Acceptance Test Criteria), Attachment ATP (Acceptance Test Plan), and Attachment PIM (PIM Content);
  3. All other Attachments (excluding Appendix A, Attachment PRO (Proposal), Attachment RFP (Request for Proposal), and Attachment BND (Performance Bond Form));
  4. Appendix A;
  5. Attachment BND (Performance Bond Form);
  6. Attachment RFP (Request for Proposal);
  7. Attachment PRO (Proposal); and

8. Any other documents incorporated by reference into this Agreement.

### 3.3 Attachments

The following Attachments are incorporated expressly into this Agreement and further define the Services, the System and the rights and responsibilities of the Parties:

<b>ATTACHMENT LIST</b>	
<b>APPENDIX A</b>	General Provisions Governing Contracts for Consultants, Professional and Technical Services
<b>ATTACHMENT ATC</b>	Acceptance Test Criteria
<b>ATTACHMENT ATP</b>	Acceptance Test Plan
<b>ATTACHMENT BND</b>	Performance Bond Form
<b>ATTACHMENT CCP</b>	Change Control Procedures
<b>ATTACHMENT NDA</b>	Non-Disclosure Agreement Form
<b>ATTACHMENT OBS</b>	Description of Owner Base Services
<b>ATTACHMENT OCF</b>	Owner-Contractor Contract Form
<b>ATTACHMENT PIM</b>	PIM Content
<b>ATTACHMENT PRO</b>	Proposal
<b>ATTACHMENT RFP</b>	Request for Proposal
<b>ATTACHMENT SCH</b>	Implementation Schedule
<b>ATTACHMENT SEC</b>	DOI Information Security Requirements
<b>ATTACHMENT SLA</b>	Service Levels
<b>ATTACHMENT SUB</b>	Approved Subcontractors
<b>ATTACHMENT TAX</b>	Tax Affirmation
<b>ATTACHMENT TPR</b>	TLC-Provided Resources
<b>ATTACHMENT TSS</b>	Description of TLC System Services

## **4 SERVICES**

### **4.1 System Integration**

The Contractor shall (a) develop, implement and integrate a turnkey System that conforms to the Requirements and (b) provide the other Services, all in accordance with this Agreement. Certain portions of the System shall be used by Contractor to deliver Services to the TLC directly while other aspects of the System are used to deliver the Owner Base Services to Owners who elect to purchase such Owner Base Services from Contractor as described in Section 6 (Owner-Contractor Contracting Process). Contractor's responsibilities include (i) acquiring, configuring, installing, and integrating the Hardware, Software and Network components that comprise the System and (ii) modifying, operating, maintaining and managing such Hardware, Software, and Network elements to maintain the compatibility and interoperability of all System components.

### **4.2 Implementation**

#### **4.2.1 Implementation Plan**

- 4.2.1.1 Subject to Section 4.2.2 (Extensions of the Implementation Schedule), Contractor shall use its Best Efforts to complete the development and implementation of the System (the "Implementation Services") on or before the Scheduled Service Commencement Date. The Implementation Services shall be performed in accordance with the Implementation Plan and without causing a material disruption to the TLC's operations or the Owners' (or, if applicable, the Medallion Agent's) business activities. Contractor's Implementation Project Manager shall be responsible for managing the Implementation Services.
- 4.2.1.2 Until the completion of the Implementation Services as described in the Implementation Plan, Contractor's Implementation Project Manager shall review with the TLC Program Manager the status of the Implementation Services as often as may be reasonably requested by the TLC Program Manager.
- 4.2.1.3 Contractor will be responsible for overall management of the Implementation Plan. Each Party shall perform the tasks required of it by the Implementation Plan in accordance with the Implementation Schedule.
- 4.2.1.4 The TLC shall cooperate with Contractor and provide to Contractor reasonable information as may be requested by Contractor to coordinate the implementation activities and to complete the Implementation Services.
- 4.2.1.5 Upon identification of any issues reasonably likely to adversely affect the completion of any Implementation Plan activity, Contractor shall promptly



notify the TLC, and (subject to Section 4.2.2 (Extensions of the Implementation Schedule) below) the Parties shall cooperate to establish a mutually acceptable action plan to minimize the adverse effect.

#### **4.2.2 Extensions of the Implementation Schedule**

- 4.2.2.1 Upon written notice from the TLC that the TLC desires Contractor to extend the Implementation Schedule, or if the Implementation Schedule is extended as a result of delays caused by the TLC or the TLC Representative, Contractor shall extend the Implementation Schedule accordingly. The TLC shall use reasonable efforts to notify Contractor of any planned extensions of the Implementation Schedule at least ten (10) days in advance. If, as the result of delays caused by the TLC or the TLC Representative, the Implementation Schedule is delayed by one hundred eighty (180) days or more, Contractor may, as its sole and exclusive remedy, terminate this Agreement without incurring liability upon at least thirty (30) days' prior written notice to the TLC; *provided, that* (a) the TLC fails to revise the Implementation Schedule to reduce the period of delay to less than one hundred eighty (180) days during the thirty (30) day period following its receipt of Contractor's termination notice and (b) Contractor issues such written notice of termination within thirty (30) days following the date that Contractor's right to submit a termination notice under this Section 4.2.2.1 first arises. The TLC shall use reasonable efforts to perform the tasks and responsibilities assigned to it hereunder to avoid causing any undue delays in completing the Implementation Schedule.
- 4.2.2.2 In the event that the Implementation Schedule is extended for more than thirty (30) days as a result of delays caused by Contractor or any Contractor Agents, the TLC may, in its sole discretion and as its sole remedy arising out of such delay, terminate this Agreement for cause pursuant to Section 9.3.1 (Termination for Cause) on at least thirty (30) days' prior written notice to Contractor. In the event that the Implementation Schedule is extended for more than thirty (30) days as a result of delays caused by a *force majeure* event, the TLC may, in its sole discretion, terminate this Agreement without liability pursuant to Section 9.3.2.1 ([Termination for Convenience] Without Cost) on at least thirty (30) days' prior written notice to Contractor.

#### **4.3 System Development and Testing**

Contractor shall design, develop and test a turnkey System that conforms to the Acceptance Criteria. As part of the Development Services, Contractor shall perform the tasks and responsibilities in this Section 4.3.



#### **4.3.1 Development of Acceptance Test Procedures**

4.3.1.1 As part of the Implementation Services, Contractor shall prepare and deliver to the TLC for its review and approval detailed Acceptance Test Procedures consistent with the Attachment ATP (Acceptance Test Plan) and the schedule set forth in Attachment SCH (Implementation Schedule). Contractor shall use its Best Efforts to make any corrections and changes necessary to accommodate concerns presented to Contractor by the TLC in the course of the TLC's review of the Acceptance Test Procedures.

4.3.1.2 The Acceptance Test Procedures shall use information technology industry standard testing Tools, techniques and methodologies and shall comprehensively test whether the System and the Services satisfy the Acceptance Criteria under the expected range of operating conditions during the Acceptance Period. Although Contractor is primarily responsible for performing the specific tasks necessary to complete the Acceptance Tests, Contractor shall provide TLC or the applicable TLC Representatives with access to Contractor's facilities to the extent necessary to allow the TLC and the applicable TLC Representatives to observe, and verify the results of, all Acceptance Test-related activities. Verification of the Acceptance Test results and activities may, in the TLC's sole discretion, include audits described in Section 4.4.2.2. At a minimum, the Acceptance Test Procedures shall include the following:

1. Milestone Dates for each phase of the acceptance testing
2. Test conditions and circumstances that are representative of the System usage patterns likely to be experienced during normal Taxicab operations;
3. A demonstration that the Taxicab System satisfies the Acceptance Criteria when Taxicabs travel throughout the five (5) boroughs of New York City and the surrounding metropolitan area (including La Guardia, John F. Kennedy and Newark Airports), as may be described in the Acceptance Test Procedures;
4. A process describing how the Parties will validate that the System (including all of its components) and the Services satisfy all of the Acceptance Criteria consistent with the Acceptance Test Plan; and
5. Reports to the TLC, no less than weekly, that accurately and completely show when each stage of the Acceptance Test is complete and shows the Acceptance Test results.

### **4.3.2 Development Process**

Contractor shall perform the responsibilities described below in accordance with the Implementation Schedule.

#### **4.3.2.1 Prototype Demonstration**

Notwithstanding Section 18.5.2, on a date selected by the TLC upon not less than ten (10) days' prior written notice to Contractor, Contractor may participate in a public demonstration organized by the TLC to show the look, feel, features and functionality of the equipment and software each Authorized Contractor candidate proposes to build and install in the Taxicabs. The TLC shall provide Contractor at least two (2) days' prior written notice of the location and specific date and time of the public demonstration. To participate in the demonstration, Contractor shall (a) obtain at least one (1) vehicle substantially similar to a Taxicab, (b) install equipment and software in such vehicle that simulates the portion of the Taxicab System that is experienced by the passenger(s), and (c) operate such simulation in a manner that demonstrates to the public and the TLC the look, feel, features and functions of the Taxicab System. The TLC, in its sole discretion, may delay the date of the demonstration upon not less than five (5) days' prior written notice to Contractor.

#### **4.3.2.2 Beta Taxicab System Development and Testing**

4.3.2.2.1 Contractor shall (a) build a Beta Taxicab System, (b) install (at Contractor's sole expense) the Beta Taxicab System in vehicles as required to conduct the applicable Acceptance Tests, (c) perform the applicable Acceptance Test to test the functionality of the installed Beta Taxicab Systems and (d) reasonably cooperate and assist the TLC to assess the acceptability of the proposed PIM content by Passengers and the acceptability of the Taxicab System by Drivers, all for the purpose of showing that Contractor's solution for the Taxicab System complies with the Acceptance Criteria. Contractor shall ensure that Beta Taxicab Systems (including the PIM content) installed as part of the Acceptance Tests of the Beta Taxicab System are not accessible by Passengers in Taxicabs available for hire.

4.3.2.2.2 After the completion of each Acceptance Test Stage for the Beta Taxicab System, the Parties shall determine whether the applicable portion of the System or Services satisfy the applicable Acceptance Criteria. If the Parties agree that the Beta Taxicab System proves that Contractor's solution complies with the applicable Acceptance Criteria by successfully completing all of the Acceptance Test Stages in accordance with the Acceptance Test Procedures, the

Parties will promptly document their agreement in a writing signed by both Parties.

4.3.2.2.3 If, however, the Parties fail to agree that the Beta Taxicab System successfully completed any applicable Acceptance Test Stage by or before the applicable Milestone Dates in accordance with the Acceptance Test Plan, (a) the TLC shall notify Contractor of the deficiencies in the System or Services that caused it to fail the applicable Acceptance Test Stage and (b) Contractor shall have thirty (30) additional days from the missed Milestone Date to correct any such deficiencies and conduct subsequent Acceptance Tests of the Beta Taxicab System. In the event that Contractor fails to successfully complete the applicable Acceptance Test Stages (as evidenced by written verifications signed by the Parties pursuant to Section 4.3.2.2.2) prior to the expiration of such thirty (30) day period, the TLC may terminate this Agreement without liability to either Party immediately upon written notice to Contractor.

4.3.2.2.4 Upon any Owner's written request, Contractor shall promptly remove the Beta Taxicab Systems from such Owner's Taxicabs (at no cost to such Owners).

4.3.2.3 Production System Development and Deployment Tests

4.3.2.3.1 On or before the applicable Milestone Date, Contractor shall (a) prepare the Functional System Description of the System that expands upon the Beta Taxicab System design and implements all of the Requirements, and (b) present at least three (3) hardcopy versions and one electronic version (viewable using one of the Microsoft Office software applications) of such Functional System Description document to the TLC for its review and approval. The TLC shall provide written notice to Contractor within ten (10) business days after the TLC's receipt of the proposed Functional System Description if it determines that any corrections or changes to the proposed Functional System Description are necessary. If the TLC fails to notify Contractor within such ten (10) business day period, then the Functional System Description shall be deemed approved by the TLC. Contractor shall use its Best Efforts to make any corrections and changes necessary to accommodate concerns presented to Contractor by the TLC in the course of the TLC's review of the Functional System Description.

4.3.2.3.2 After finalizing the Functional System Description, Contractor shall develop a Detailed System Design Document that conforms to the Functional System Description approved by the TLC. Contractor shall submit at least three (3) hardcopy versions and one electronic version (viewable using one of the Microsoft Office software applications) of the Detailed System Design Document to the TLC for its review. The TLC shall provide written notice to Contractor within twenty (20) business days after the TLC's receipt of the proposed Detailed System Design Document if the TLC determines that any corrections or changes to the proposed Detailed System Design Document are necessary. Contractor shall use its Best Efforts to make any corrections and changes necessary to accommodate concerns presented to Contractor by the TLC in the course of the TLC's review of the Detailed System Design Document. If Contractor modifies the System design during the development process or Acceptance Tests, then Contractor shall (a) update the Detailed System Design Document to reflect such modification, and (b) promptly notify the TLC of the modification. On or before the end of the last Acceptance Test Stage, Contractor shall submit to the TLC the final Detailed System Design Document, which shall incorporate all modifications made during the development and testing of the System and Services.

4.3.2.3.3 After finalizing the Detailed System Design Document, Contractor shall (either directly or through a Contractor Agent) (a) acquire the Hardware, Software, Network components and Intellectual Property that compose the System, (b) configure, install and integrate the Hardware, Software and Network components to construct the System in conformance with the Detailed System Design Document, and then (c) tender the System (including the necessary Taxicab Systems) to the TLC to enable the Parties to conduct the applicable Acceptance Tests of the System.

#### **4.4 Acceptance Test of the Entire System**

##### **4.4.1 General**

4.4.1.1 The purpose of the final Acceptance Test Stage is to prove, to the TLC's reasonable satisfaction, that the System and Services comply with the applicable Acceptance Criteria.

4.4.1.2 To support the final Acceptance Test of the System, Contractor shall install (at no charge to the TLC or Owners) the Taxicab Systems in at

least fifty (50) Taxicabs in accordance with Attachment ATP (Acceptance Test Plan) and the Acceptance Test Procedures. The TLC will reasonably cooperate with and assist Contractor in its efforts to obtain Taxicabs from Owners for use in the Acceptance Test for the System. However, Contractor shall be primarily responsible for securing Taxicabs and performing the Acceptance Test for the System.

4.4.1.3 In its arrangements with Owners to secure such test Taxicabs, Contractor shall not, and shall not seek to, obligate any Owner to commit to purchase any services or products from Contractor or to deal exclusively with Contractor. If the TLC discovers that Contractor entered into an arrangement with any Owner or Medallion Agent obligating Owner or any Medallion Agent to purchase any amount of products or services in connection with this Agreement, the TLC may, in its discretion, terminate this Agreement for cause immediately upon written notice to Contractor. The prohibition in this Section 4.4.1.3 shall not preclude Contractor from offering (in writing) Owners or Medallion Agents additional discounts on the Owner Base Services as an incentive for Owners or Medallion Agents to provide Taxicabs in support of the Acceptance Tests.

4.4.1.4 Upon any Owner's request or after completion of the final Acceptance Tests of the System, Contractor shall promptly remove the Taxicab System from the test Taxicabs (at no cost to the applicable Owners) unless Contractor and an applicable Owner enter into an Owner-Contractor Contract in accordance with this Agreement.

#### **4.4.2 Final Acceptance Verification**

4.4.2.1 When the System and Services successfully pass the final Acceptance Test Stage as agreed upon by the Parties in writing (or as described in the Acceptance Test Procedures), Contractor shall submit a written certification ("Acceptance Certification") to the TLC Program Manager signed by an officer of Contractor (a) stating that Contractor followed the Acceptance Test Procedures, and the System and Services substantially conform to the Acceptance Criteria, and (b) expressly identifying all errors or defects detected during the Acceptance Tests and summarizing the corrective action taken. If the Acceptance Certification identifies any errors or defects that have not been corrected as of the date of the Acceptance Certification and the TLC determines that such errors or defects are material, the TLC shall promptly notify Contractor of its determination and Contractor shall use its Best Efforts to promptly cure such errors and defects.

4.4.2.2 For the duration of the Term, Contractor shall retain all records, files and data related to the Acceptance Tests. The TLC may, in its sole discretion, conduct (or engage a third-party auditor to conduct) an audit

of the Acceptance Test activities and results for up to two (2) years following the Actual Service Commencement Date. For this purpose, Contractor shall provide to the TLC, and its auditors (including internal audit staff) (collectively, "audit representatives"), access at reasonable times and on reasonable notice, to the facilities at which or from which Contractor is conducting (or has conducted) the Acceptance Tests, to Contractor personnel (including Contractor subcontractors) involved in the Acceptance Tests, and to data and records relating to the Acceptance Tests, all for the purpose of performing audits and inspections of the Acceptance Tests to verify the Acceptance Tests reports and results. If any such audit shows that Contractor materially misrepresented any facts or conclusions upon which the Acceptance Tests results are based or shows that any material statement in the Acceptance Certification is false, then (a) Contractor shall reimburse the TLC for all costs arising out of or related to the audit and (b) the TLC may terminate this Agreement immediately for cause upon written notice to Contractor. Nothing in this Agreement shall be construed to affect or limit the powers of the Comptroller of the City of New York pursuant to applicable Law.

#### **4.4.3 Deployment of Owner Base Services**

When the TLC receives the Acceptance Certification and final Acceptance Test results from Contractor, the TLC shall determine whether there is a reasonable basis to conclude that the System or the Services satisfy the Acceptance Criteria. If there is a reasonable basis for the TLC to conclude that the System or the Services satisfy the Acceptance Criteria, the TLC (a) shall notify Contractor in writing (the "Notice to Proceed") that, beginning on the Actual Service Commencement Date, it is approved to solicit to provide Owner Base Services to Owners in accordance with this Agreement and (b) shall, on or before the Actual Service Commencement Date, add Contractor to the list of Authorized Contractors, which the TLC shall announce to Owners and Medallion Agents using the TLC's standard industry notice procedures.

#### **4.5 Day-2 Services**

Commencing on the Actual Service Commencement Date, Contractor shall provide the Day-2 Services.

#### **4.6 Hardware and Software Resources**

##### **4.6.1 Contractor-Provided Resources**

- 4.6.1.1 Except for the TLC-Provided Resources, Contractor shall be responsible for providing all software (including software agents, tools and database management systems), hardware, databases, network components and Intellectual Property necessary for it to provide the Services and the System in accordance with this Agreement, and for the TLC to use and access the System and Services.



4.6.1.2 Contractor hereby grants to the City and the TLC a worldwide, fully paid-up, non-exclusive, non-transferable, right and license (a) to Access, use, copy, and display Software (including database management system software but excluding source code) made available to the TLC, including related Tools and (b) to create and use interfaces between such Software and other systems or software used by the City, the TLC or any other Agency, all to the extent necessary for the TLC to obtain the full use and enjoyment of the Services and System in accordance with this Agreement. Such license shall take effect without the need for any further documentation from Contractor, and shall expire upon the expiration or earlier termination of the Term (including the Termination Assistance Period). Notwithstanding any provisions in this Section 4.6.1.2 to the contrary, as and to the extent necessary for a Third Party (excluding other Authorized Contractors) or TLC Representative (other than an employee of the City, TLC or other Agency) to perform work on the TLC's behalf, the TLC may grant to such Third Party or TLC Representative (other than an employee of the City, TLC or other Agency) a non-exclusive right to use and Access such Software, including related Tools, solely for the benefit of the TLC. Such Third Party shall be required to keep confidential all Confidential Information of Contractor obtained pursuant to this Section 4.6.1, and to refrain from using any rights so obtained for the benefit of anyone other than the TLC, the City or other Agencies. The TLC shall be responsible for causing the TLC Representatives and Third Parties authorized by the TLC to use and Access the Software to comply with the license(s) set forth in this Section 4.6.1.2.

4.6.1.2.1 The right to use and Access (along with other rights expressly set forth herein) in this Section 4.6.1 is without limitation as to (a) the number of servers, workstations, or personal computers upon which the applicable Software is installed or from which it may be accessed, or (b) the location of such servers, workstations, and/or personal computers; *provided, that* both the number and locations of such servers, workstations or personal computers are limited to those expressly approved and designated in writing by the TLC.

4.6.1.2.2 If Software licensed under this Section 4.6.1 is provided by a Third Party, then Contractor shall obtain and maintain the Required Consents necessary for Contractor to grant the City and the TLC the rights to such Third-Party provided Software as described in this Section 4.6.1. Upon the TLC's written request, Contractor shall provide the Required Consents to the TLC.



4.6.1.2.3 Contractor and the TLC agree that no so-called "shrink wrap" or "click wrap" license terms shall apply to any Software. In the event that any Software is packaged with any such "shrink wrap" license or any "click wrap" license is delivered or made available to the TLC or TLC Representatives when using such Software, the terms and conditions of this Agreement (including Exhibit COTS to Attachment TSS (Description of TLC System Services)) shall apply and not the terms of the "shrink wrap" or "click wrap" license. For Third-Party COTS Software provided to the TLC by Contractor and identified as such in Exhibit COTS of Attachment TSS (Description of TLC System Services), the applicable license(s) set forth in Exhibit COTS of Attachment TSS (Description of TLC System Services) shall apply in lieu of the license rights set forth in this Section 4.6.1.2.

4.6.1.2.4 For purposes of Section 365(n) of the Bankruptcy Code, all rights and licenses granted pursuant to this Section 4.6.1.2 by Contractor to the City and the TLC are, and shall otherwise be deemed to be, licenses of "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code. The Parties agree that the City and the TLC, as a licensee of such rights under this Section 4.6.1.2, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code.

4.6.1.3 Notwithstanding any provision to the contrary contained in this Agreement, the City's and the TLC's right to use and Access the Services, Software and System under this Agreement shall include the following: (a) the right to allow any TLC Representative or other person, entity or device (to the extent such device is interoperable with the Service, Software or System) designated by the TLC to Access or otherwise use all, or any portion, of the Services, Software and the System to support the TLC's operations; (b) the right to designate any TLC Representative or other person, entity or device as being unauthorized to Access or otherwise use all, or any portion, of the Services, Software and the System (in which case Contractor shall prevent such TLC Representative or other person, entity or device from obtaining access thereto to the extent access to the Services, Software and System is managed by Contractor); (c) the right to use the Services, Software and the System to support the TLC's operations; and (d) the right to use Software in any manner that does not constitute copyright infringement under Section 107 of the Copyright Act, 47 U.S.C. §107.

#### **4.6.2 TLC-Provided Resources**

Attachment TPR (TLC-Provided Resources) contains a complete list and description of all of the TLC-Provided Resources that are required for the TLC to use and access the System and Services. The TLC, its Third-Party Providers or other designees shall be responsible for procuring, operating and maintaining the TLC-Provided Resources.

#### **4.6.3 Required Consents**

- 4.6.3.1 Except for TLC-Provided Resources, Contractor is responsible for obtaining all Required Consents for Hardware, Software, Network components and Intellectual Property provided by Contractor or included in the System. The TLC shall reasonably assist Contractor in obtaining such Required Consents. Contractor shall pay all fees (including re-license fees, transfer/right to use fees, relocation fees, applicable taxes, and upgrade fees) required to obtain such Required Consents. Upon the TLC's written request, Contractor shall provide the Required Consents to the TLC.
- 4.6.3.2 Unless expressly set forth in this Agreement to the contrary, the TLC shall obtain all Required Consents for the TLC-Provided Resources. Contractor shall reasonably assist the TLC in obtaining such Required Consents. The TLC shall pay all fees (including re-license fees, transfer/right to use fees, relocation fees, applicable taxes, and upgrade fees) required to obtain such Required Consents.

#### **4.7 Technology Currency**

- 4.7.1 During the Term, Contractor shall keep the TLC System Services current with all new technologies Contractor or its Affiliates makes generally available for no additional charge or as part of normal maintenance provided to its other customers. In addition, Contractor shall, subject to Section 4.12.2 (Change Control Procedures), implement all revisions, updates, modifications, corrections, releases, versions, fixes and enhancements (collectively the "Updates") to Software used to provide the TLC System Services as soon as such Updates are made generally available to Contractor's or its Affiliates' other customers. Contractor shall not charge the TLC for any Updates that are made generally available to Contractor's or its Affiliates' other customers for no additional charge or as part of normal maintenance. For purposes of this Agreement, an Update once incorporated into any Software hereunder shall be considered part of such Software, as applicable.
- 4.7.2 In providing the Tools and other methodologies, technology, the Services and the System to the TLC, Contractor shall (a) jointly with the TLC, identify the least cost/highest benefit methods to implement proven methodologies and technology changes and, upon the TLC's approval,

implement proven methodologies and technology changes, (b) maintain a level of currency with such methodologies and technology that allows the TLC to take advantage of advances for the benefit of the New York City taxicab industry, (c) provide to the TLC the Improvements for the TLC's evaluation in connection with the Services, and (d) during the Executive Steering Committee meetings, inform the TLC of any new methodologies and technology Contractor offers to its other customers or trends and directions of which Contractor is otherwise aware that could reasonably be expected to have an impact on the TLC's operations or the New York City taxicab industry. If the TLC requests that Contractor implement an Improvement, such Improvement shall be considered a request for a New Service subject to Section 4.12.1 (New Services).

#### 4.8 Training

- 4.8.1 Contractor shall develop appropriate training materials and provide to the TLC and TLC Representatives the training, as further described herein and in Attachment TSS (Description of TLC System Services).
- 4.8.2 The training shall include instruction on: (a) administering and ordering Services; (b) using the portions of the System accessible by the TLC; (c) reporting delays or other troubles; (d) call center and 311 Service functions performed by the TLC or a TLC Representative; and (e) managing, tracking, and recording Contractor's performance under this Agreement. Such training will also include instruction on the use of the change control procedures and the Tools.
- 4.8.3 Training materials distributed to TLC or TLC Representatives shall be subject to the TLC's prior approval, which approval shall not be unreasonably withheld or delayed. Contractor shall use its Best Efforts to implement any changes to the training materials reasonably requested by the TLC. Contractor shall cooperate with the TLC in the training of Contractor personnel on the TLC's systems and practices so that Contractor can properly and efficiently provide the Services and the System. The TLC may, in its sole discretion, assist in the training of its personnel, and the curriculum.
- 4.8.4 Training described or referenced in this Section 4.8 shall be provided at TLC Facilities (as designated by the TLC), which the TLC shall also make available for this purpose. The TLC shall make its personnel reasonably available to receive such training.
- 4.8.5 Contractor shall conduct and complete such training for the TLC personnel in accordance with the Implementation Plan. Contractor shall provide retraining to the TLC, TLC Representatives and other City personnel upon reasonable request, and as needed to accommodate

normal turnover among the TLC's and the City's employees, and shall update training materials during the Term (a) when changes to the Services or the System are introduced or (b) to incorporate any process improvements identified by the Parties.

- 4.8.6 The TLC reserves the right to direct the Contractor to modify the training schedule as reasonably necessary and appropriate to accommodate the actual implementation of the Services and System.

#### **4.9 Disaster Recovery**

No later than ninety (90) days after the Effective Date, Contractor shall develop and present a proposed DR Plan to the TLC for its review and approval. The DR Plan shall apply to all Services and the System. After the DR Plan is approved in writing by the TLC, Contractor shall (a) implement and comply with the DR Plan, (b) update the DR Plan at least once every six- (6-) months, (c) certify to the TLC at least twice during every twelve- (12-) month period that the DR Plan is fully operational, (d) test the DR Plan at least once every twelve- (12-) months to verify that the DR Plan is fully operational, and (e) follow the DR Plan upon the occurrence of a disaster (as such term is defined in the DR Plan). In accordance with Section 8.10 (Audit Rights), the TLC or the City may audit Contractor's facilities, procedures, records and methodologies to determine Contractor's readiness and ability to perform under the DR Plan.

#### **4.10 Emergency PSA Delivery**

From time-to-time, the TLC may designate Emergency PSAs. Contractor shall provide, as part of the System, a means for the TLC to submit such Emergency PSAs to Contractor or the System directly in text, HTML format or any other format designated in the Specifications or Procedures Manual. The maximum size of the Emergency PSA file will be agreed upon by the Parties and set forth in the Specifications. Upon receiving an Emergency PSA from the TLC, Contractor or the System shall immediately transmit and present such Emergency PSA electronically to the Drivers or Passengers, as applicable, via the Taxicab System without regard to any other content then-being transmitted or displayed.

#### **4.11 Incidental Services**

Any services, functions, or responsibilities not specifically identified or described in this Agreement that are an inherent or necessary part of the Services or the System, or that are reasonably required for proper performance or provision of the Services or the System, shall be deemed to be included within the TLC System Services to be performed by Contractor under this Agreement, as if specifically identified or described herein. Except as otherwise expressly set forth in Section 4.6.2 (TLC-Provided Resources), Contractor shall (at its sole expense) be responsible for providing all facilities, personnel, Hardware, Software, Networks and other resources necessary to provide the Systems Services and the System to the TLC.

#### **4.12 New Services and Changes to Existing Services**

##### **4.12.1 New Services**

The TLC or Contractor may from time to time during the Term request that Contractor provide a New Service. Upon receipt of such a request from the TLC or as part of any request submitted by Contractor to the TLC, Contractor shall provide the TLC with a written proposal for such New Service. Such written proposals shall include the following:

1. A description of the services, function, and responsibilities Contractor anticipates performing in connection with such New Service;
2. A schedule for commencing and completing such New Service;
3. Contractor's prospective charges (if any) for such New Service, including a detailed breakdown of such charges;
4. When appropriate, a description of any new Intellectual Property, Hardware, Software or Network components to be provided by Contractor in connection with such New Service;
5. A description of the human resources necessary to provide the New Service;
6. When appropriate, a list of any existing Intellectual Property, Hardware, Software or Network components included in or to be used in connection with such New Service;
7. When appropriate, acceptance test criteria and procedures for any new Software, Hardware or any products, packages or services; and
8. Such other information as is requested by the TLC.

New Services may be added to this Agreement only as duly authorized by the TLC and in accordance with the Procurement Policy Board Rules. The addition of a New Service to this Agreement shall not be valid unless made in writing and signed by the Parties. When a New Service has been properly added to this Agreement, it shall thereafter be considered part of the Services. Contractor shall not begin performing or implementing any New Services until the TLC has provided Contractor with written authorization from the TLC Program Manager to perform the New Service. After the TLC provides such authorization to Contractor, the TLC shall post a notice on its Web site announcing the New Service if the TLC determines, in its sole discretion, that such New Service is likely to materially affect Drivers, Owners or Passengers.

##### **4.12.2 Change Control Procedures**

- 4.12.2.1 All requests for Changes shall be processed in accordance with the change order procedures set forth in Attachment CCP (Change Control Procedures).

- 4.12.2.2 Contractor shall give the TLC and affected Owners and Medallion Agents at least thirty (30) days' advance written notice of any Change proposed by Contractor (other than fixes, maintenance patches or security patches implemented pursuant to Section 4.12.2.4) or any Owner or Medallion Agent. Contractor shall include with such notice an analysis of the potential impact of such Change on the Services and System.
- 4.12.2.3 Contractor shall schedule its implementation of Changes so as not to materially interrupt the performance of the System or the Owners' or Medallion Agents' business operations.
- 4.12.2.4 Before implementing any Change, Contractor shall obtain the TLC's prior written approval pursuant to Section 4.12.2.8. Contractor may perform or implement fixes, maintenance patches necessary to conform the System or any components of the System to the applicable Specifications and security patches at any time and without the TLC's approval, to the extent such fixes or patches are necessary, in Contractor's good faith judgment, to (a) maintain the continuity of the Services, or (b) correct an event or occurrence that would, if uncorrected, substantially prevent, hinder or delay proper operation of the System. Contractor shall (i) promptly notify the TLC and the affected Owners (including notices to Medallion Agents) of all such fixes and patches, and (ii) keep an updated log of all such fixes and patches.
- 4.12.2.5 Contractor shall not introduce any Adverse Changes into the Services or the System. Prior to introducing any new Software, Hardware or Network element into the System, Contractor shall test such item in the Staging Environment to verify that it will not give rise to an Adverse Change.
- 4.12.2.6 After such Change successfully passes the Staging Environment tests, Contractor shall implement the Change in accordance with this Agreement. Upon successful implementation of the Change, Contractor shall test the Change and System using appropriate and standard testing Tools and procedures to validate that the System continues to operate substantially in conformance with the Requirements and Specifications, and the Change is performing its intended functions in a reliable manner.
- 4.12.2.7 Contractor shall follow a formalized methodology in migrating Changes from the Staging Environment into the production System as may be set forth in the Procedures Manual.
- 4.12.2.8 Changes made to this Agreement shall be duly authorized by the TLC and in accordance with the Procurement Policy Board Rules. Changes



shall not be valid unless made in a writing signed by the Parties. After the TLC duly authorizes a Change, the TLC shall either post a notice on its Web site announcing the Change or issue an industry notice if the TLC determines, in its sole discretion, that such Change is likely to materially affect Drivers, Owners or Passengers. In addition, the TLC shall notify all Authorized Contractors of any duly authorized Change and shall make such Change available for implementation by other Authorized Contractors where the TLC determines, in its sole discretion, that such Change waives or materially alters any of the terms, conditions, criteria or requirements set forth in any of the following: Attachment ATC (Acceptance Test Criteria); Attachment ATP (Acceptance Test Plan); Attachment PIM (PIM Content); or Attachment SEC (DOI Information Security Requirements).

#### **4.12.3 Staging Environment**

As part of the TLC System Services, Contractor shall provide a Staging Environment that will (a) permit Contractor and the TLC to test Changes before introducing them into the System, (b) confirm that Changes will operate with (and not degrade the functionality or performance of) the System, (c) test whether the addition of, or transfer to, any New Service will adversely affect the operation or performance of the System, and (d) permit the TLC and TLC Representatives to develop and test applications, products or methods that will interact with, or connect to, the System or the Services.

#### **4.13 PIM Advertising Capability and Subsidies**

4.13.1 Contractor shall not provide any advertising to Passengers via the PIMs until (a) Contractor's PIM advertising features, functionality and design successfully passes Passenger acceptance and (b) Contractor obtains the TLC's prior written authorization to provide PIM advertising in accordance with Attachment PIM (PIM Content). To obtain the TLC's authorization (which shall not be unreasonably withheld), Contractor shall notify the TLC in writing that (i) Contractor has obtained adequate advertising commitments and agrees to offer all Owners the advertising subsidized pricing in accordance with Exhibit RC (Rates and Charges) to Attachment OCF (Owner-Contractor Contract Form), effective as of the date specified in such notice (the "Advertising Commencement Date") and (ii) Contractor's PIM advertising features, functionality, and design successfully completed Passenger acceptance testing. For purposes of this Section 4.13, "advertising" means any commercial advertisements or commercial sponsorships (as defined in Section 2 of Attachment PIM (PIM Content)).

4.13.2 To establish that Contractor's PIM advertising features, functionality and design successfully completed Passenger acceptance testing, Contractor must either (a) demonstrate that the PIM advertising features, functionality and design are substantially similar to the PIM advertising



features, functionality and design evaluated during the initial Acceptance Tests and included within the scope of the Acceptance Certification or (b) present to the TLC the results of appropriate Passenger acceptance surveys conducted by Contractor (at Contractor's sole expense) where the PIM advertising features, functionality and design are not substantially similar to the PIM features, functionality and design evaluated during the initial Acceptance Tests, or such PIM advertising features, functionality and design are not otherwise included within the scope of the Acceptance Certification.

- 4.13.3 The TLC shall, within ten (10) days after its receipt of such notice from Contractor, notify Contractor whether Contractor is authorized to provide such advertising as of the Advertising Commencement Date. If Contractor obtains such written authorization from the TLC, Contractor shall (a) subject to Section 6.2 (Service Commencement and Owner Procurement), notify (in writing) all Owners bound by existing Owner Contractor Contracts promptly that they are entitled (on or after the Advertising Commencement Date) to receive such advertising subsidized pricing, (b) add a statement in the Offer Documentation clearly and conspicuously indicating that advertising subsidized pricing is available to all Owners, (c) obtain the applicable Owners' prior written consent to allow advertising via PIMs in their respective Taxicabs, where such consent may either be documented in written notices submitted by Owners to Contractor or in Orders submitted by Owners), and (d) provide the advertising subsidized pricing (in accordance with Exhibit RC (Rates and Charges) to Attachment OCF (Owner-Contractor Contract Form)) to all Owners whose PIMs are used by or for Contractor to display advertisements to Passengers.
- 4.13.4 Notwithstanding the foregoing, if Contractor (a) agrees (as indicated in Exhibit RC (Rates and Charges) attached to Attachment OCF (Owner-Contractor Contract Form)) to make available the advertising subsidized pricing described in Exhibit RC (Rates and Charges) to Attachment OCF (Owner-Contractor Contract Form) to all Owners on and after the Actual Service Commencement Date, (b) tenders its actual PIM advertising design, features and functions for inclusion in the Acceptance Tests, and (c) receives a Notice to Proceed after successful completion of the Acceptance Tests as described in Section 4.4 (Acceptance Test of the Entire System), then Contractor shall be deemed approved by the TLC under this Section 4.13 (effective as of the Actual Service Commencement Date) to provide PIM advertising in accordance with Attachment PIM (PIM Content).

## **5 NO FEES PAYABLE**

The consideration provided by the TLC to Contractor for the Services, the System and the promises made by Contractor hereunder is (a) the opportunity for Contractor to offer the Owner Base Services to Owners pursuant to Section 6

(Owner-Contractor Contracting Process), (b) the TLC's exclusion from such opportunity of other vendors and service providers that are not selected by the TLC as the result of the RFP process, and (c) the opportunity for Contractor to obtain revenue from PIM advertising. The foregoing consideration offered by the TLC is not an exhaustive list of the benefits Contractor may experience in connection with this Agreement or any Owner-Contractor Contract. Contractor hereby acknowledges the sufficiency of the TLC's consideration. No fees or charges of any kind shall be payable by the City or the TLC to Contractor or any Contractor Agent under this Agreement. Contractor shall not condition the TLC's use of, or access to, the Services or the System on any fees, charges or reimbursement, whether payable to Contractor, Contractor Agent or a Third Party. Except for the rates, charges, and fees payable to Third Parties by TLC for the TLC-Provided Resources, Contractor shall be solely responsible for any expenses, cost and charges incurred in connection with its performance under this Agreement, including payment of any license fees or other charges payable in order for the TLC to use the Services and System.

## **6 OWNER-CONTRACTOR CONTRACTING PROCESS**

### **6.1 Offering of Service to Owners**

- 6.1.1 Except to the extent required to obtain Taxicabs for the Acceptance Tests or as otherwise expressly permitted under this Section 6.1 or Section 6.2 (Service Commencement and Owner Procurement), neither Contractor nor any Contractor Agent shall solicit to provide or actually provide Owner Base Services, Optional Services or any other services or products similar to the Owner Base Services to Owners or any Medallion Agents. For the avoidance of doubt, "solicit" shall include offering discounts to Owners or Medallion Agents, except as permitted under Section 4.4.1.3, or providing to Owners and Medallion Agents information describing the features, functions, performance or benefits of the Taxicab System or Owner Base Services, and providing demonstrations for Owners, Medallion Agents or Drivers. Notwithstanding the foregoing, the following activities are not prohibited under this Agreement: (a) participation by Contractor or any Contractor Agent in third-party organized trade shows where (i) Contractor or a Contractor Agent displays only those products and services that it or they make generally available outside of the City of New York or (ii) Contractor or a Contractor Agent makes available written material pertaining to such products or services; and (b) participation in the public demonstration organized by the TLC under Section 4.3.2.1 (Prototype Demonstration).
- 6.1.2 Any time after the sixtieth (60<sup>th</sup>) day following the Effective Date, the TLC shall notify Contractor, along with all other prospective Authorized Contractors whose agreements with the TLC have been registered with the Comptroller, of the date that Contractor and the other prospective

Authorized Contractors whose agreements with the TLC have been registered with the Comptroller may begin to market their respective products and services to Owners (the "Pre-Sales Start Date") during a pre-sales marketing period. The Pre-Sales Start Date notice shall be issued at least two (2) weeks in advance of the Pre-Sales Start Date. During the period beginning on the Pre-Sales Start Date and ending on the Actual Service Commencement Date, Contractor may market its proposed Taxicab System, the Owner Base Services and Optional Services to Owners using marketing collateral pre-approved by the TLC; *provided, however, that*, neither Contractor nor any Contractor Agent may directly or indirectly (through Contractor Agents) enter into any contracts or written agreements with any Owner or Medallion Agent related to the provision or purchase of any Taxicab System, Owner Base Services or Optional Services. Any and all written material, press releases or other documentation related to the services or products described in this Agreements or made available to Owners (or Medallion Agents) by Contractor or any Contractor Agent shall be submitted to the TLC for prior approval pursuant to Section 18.5 (Publicity and Advertising).

- 6.1.3 Prior to the Scheduled Service Commencement Date, Contractor shall develop written marketing and sales material that accurately and clearly describes the Owner Base Services and Optional Services (including a detailed explanation of all applicable rates and charges) Contractor will offer to the Owners and Medallion Agents (the "Offer Documentation"). Contractor shall submit the Offer Documentation to the TLC for its review and approval, such approval not to be unreasonably withheld or delayed. After the Scheduled Service Commencement Date, Contractor may not solicit to provide the Owner Base Services or Optional Services using any written material other than the Offer Documentation, and may only submit Offer Documentation to Owners or Medallion Agents after the Offer Documentation is approved by the TLC under this Section 6.1.
- 6.1.4 Contractor may negotiate custom terms and conditions with any Owner or Medallion Agent for Optional Services. Before providing any Optional Services, however, Contractor shall obtain authorization from the TLC in accordance with its rules, regulations and directives. Contractor may not require any Owner or Medallion Agent to purchase any such Optional Services to obtain the Owner Base Services in accordance with the Owner-Contractor Contract Form. Except for changes related to Optional Services exclusively, Contractor shall not amend or alter the terms and conditions of the Owner-Contractor Contract Form as it relates to the Owner Base Services, and shall not execute any Owner-Contractor Contract that has been amended or altered by an Owner or Medallion Agent. Contractor may negotiate with Owners or Medallion Agents to determine custom rates and charges for the Owner Base Services, but in no event shall the rates and charges for the Owner Base

Services exceed the Maximum Prices. Any amendments or changes to the terms and conditions of the Owner-Contractor Contract Form (including supplemental terms or conditions) that apply to, or affect, the Owner Base Services shall be of no force or effect because they constitute a violation of the terms and conditions of this Agreement. The foregoing limitation on Contractor's and Owners' (including Medallion Agents') rights to modify the Owner-Contractor Contract Form shall not apply to (a) ministerial changes (e.g., filling in blanks necessary to identify the Owner or Medallion Agent, designate the effective date, and complete service orders) or (b) implementing custom rates and charges for the Optional Services.

- 6.1.5 Nothing in this Agreement creates a guarantee, promise or obligation that a minimum number of Owners or Medallion Agents will purchase services or products from Contractor, nor shall it create any obligation for the City, the TLC or any Owner or Medallion Agent to deliver a minimum amount of revenue to Contractor.
- 6.1.6 Neither Contractor nor any Contractor Agent shall (i) directly or indirectly assert or represent that its proposed Taxicab Systems (or any of its other products or services) are approved by the TLC for the New York City taxicab industry until after the Actual Service Commencement Date, (ii) make any other false, misleading or deceptive statements to Owners, Medallion Agents or the public generally, or (iii) engage in any deceptive acts or practices in connection with its participation in the Taxicab Technology Enhancement Program. The TLC may, upon written notice to Contractor, terminate this Agreement for cause where (a) a material violation of this Section 6.1.6 remains uncured (if it can be cured) ten (10) or more days after the TLC notifies Contractor of the violation in writing, (b) the TLC obtains credible evidence that Contractor entered into any agreements with Owners or Medallion Agents related to the sale of Taxicab Systems or other Owner Base Services to such Owners or Medallion Agents prior to the Actual Service Commencement Date, or (c) the TLC obtains credible evidence that Contractor has solicited (or is soliciting) Owners or Medallion Agents in violation of Section 6.1.1 and such solicitation materially and adversely affects one or more other Authorized Contractor candidates.

## **6.2 Service Commencement and Owner Procurement**

- 6.2.1 Contractor may, in accordance with this Agreement, solicit to provide and actually provide Owner Base Services and the System to Owners or Medallion Agents on and after the Actual Service Commencement Date, but in no event before the Actual Service Commencement Date.

- 6.2.2 The Actual Service Commencement Date is the latter of (a) the Scheduled Service Commencement Date or (b) the date that all of the following conditions are satisfied:
1. Contractor receives a Notice to Proceed under Section 4.4.3 (Deployment of Owner Base Services);
  2. The TLC approves the Offer Documentation pursuant to Section 6.1.3;
  3. Contractor furnishes to the TLC the Performance Bond in accordance with Section 10 (Performance Security);
  4. The TLC approves the Procedures Manual pursuant to Section 8.7 (Procedures Manual); and
  5. The TLC approves the DR Plan.
- 6.2.3 If, after the Actual Service Commencement Date, an Owner or Medallion Agent expresses an interest in purchasing the Owner Base Services or Optional Services from Contractor, Contractor shall present to the Owner or Medallion Agent the Owner-Contractor Contract Form and the Offer Documentation. Contractor shall not refuse to (a) provide Owner Base Services to any Owner or Medallion Agent who executes an Owner-Contractor Contract Form and, pursuant to one or more orders placed by Owner or Medallion Agent on an Owner's behalf, agrees to pay the Maximum Prices for such Owner Base Services or (b) execute any Owner-Contractor Contract Form signed by an Owner or a Medallion Agent on an Owner's behalf; *provided, however*, that Contractor may condition its acceptance of any particular Owner-Contractor Contract Form on the Owner's or Medallion Agent's satisfaction of the applicable creditworthiness requirements set forth in the Owner-Contractor Contract Form or the credit card merchant requirements set forth in the credit card merchant agreements incorporated into the applicable Owner-Contractor Contract. Promptly after receipt of a request from any Owner or Medallion Agent, Contractor shall make available to such Owner or Medallion Agent a copy of the Offer Documentation and the Owner-Contractor Contract Form (including Exhibits DS (Description of Services) and RC (Rates and Charges)).
- 6.2.4 Following execution of an Owner-Contractor Contract Form by Contractor and any Owner or, if applicable, Medallion Agent, and such Owner's (or Medallion Agent's) submission of corresponding order forms to Contractor, Contractor shall provide the Owner Base Services to any such Owner pursuant to the applicable service order, Owner-Contractor Contract and this Agreement. As part of the TLC System Services provided to the TLC, Contractor will coordinate the installation schedule for all Owner Base Services provided to Owners by the Contractor and shall (a) provide the TLC with a weekly report showing the progress of all such installations during the period beginning on the Actual Service Commencement Date and ending on the Compliance Date, and (b)



provide the TLC with a monthly report showing the progress of all such installations occurring after the Compliance Date.

- 6.2.5 Within thirty (30) days of the applicable effective date of each Owner-Contractor Contract, Contractor shall send electronic copies (scanned and converted to Acrobat PDF format unless the Parties mutually agree upon an alternative format) of each signed Owner-Contractor Contract to the TLC at the following email address: [contracts@tlc.nyc.gov](mailto:contracts@tlc.nyc.gov).
- 6.2.6 The TLC shall, via a TLC industry notice issued at least thirty (30) days in advance, notify Authorized Contractors and Owners of the date by which Owners must enter into contracts (and place orders for the TLC approved taxicab technology enhancements under such contracts) with the Authorized Contractors (*i.e.*, the Sign-Up Deadline) and the date by which Owners must install in their Taxicabs the taxicab technology enhancements that are the subject matter of the RFP, as such date may be extended by the TLC (the "Compliance Date"). Beginning on the Compliance Date and continuing throughout the Term, the TLC shall use reasonable efforts to (a) identify (during normal inspections) Taxicabs that do not have the required taxicab technology enhancements (as offered by an Authorized Contractor) and (b) in accordance with the TLC's rules, regulations and directives, suspend or revoke an Owner's taxicab license for any such non-compliant Taxicabs identified by the TLC during normal inspections.

### 6.3 Maximum Prices Payable by Owners

- 6.3.1 The Maximum Prices payable by Owners to Contractor and any Contractor Agent for Owner Base Services are comprised of four (4) pricing elements: the Maximum Total Cost; the Maximum Non-recurring Charges; the Maximum Recurring Charges; and the other maximum rates, charges and fees set forth in Exhibit RC (Rates and Charges) of Attachment OCF (Owner-Contractor Contract Form).
- 6.3.2 The total of all rates, charges and fees payable by Owners to Contractor (and any Contractor Agent) in connection with (a) the acquisition and use of a Taxicab System and (b) the use of all other Owner Base Services provided in support of such Taxicab System during the first thirty-six (36) months following the installation of such Taxicab System in a Taxicab shall not exceed the Maximum Total Cost. The specific amount of the Maximum Total Cost is set forth in Exhibit RC (Rates and Charges) of Attachment OCF (Owner-Contractor Contract Form).
- 6.3.3 The total of all non-recurring and other one-time charges and fees payable by any Owner to Contractor (and any Contractor Agent) in connection with the acquisition and installation of a Taxicab System and any other Owner Base Services provided in support of such Taxicab System, including the Purchase Price, installation charges, one-time license fees or right-to-use fees, or any other one-time charges), shall not exceed the Maximum Non-



recurring Charges set forth in Exhibit RC (Rates and Charges) of Attachment OCF (Owner-Contractor Contract Form).

- 6.3.4 The amount of the Maximum Recurring Charges is the difference between the Maximum Total Cost and the applicable Maximum Non-recurring Charges, divided by thirty six (36).
- 6.3.5 The Maximum Non-recurring Charges, Maximum Recurring Charges and Maximum Total Cost shall not include the following rates, charges and fees to the extent such rates, charges and fees are due and payable by Owners in accordance with their respective Owner-Contractor Contracts: credit and debit card transaction processing fees; charges to move a Taxicab System from one Taxicab to another; early order cancellation charges; Taxicab System de-installation charges; termination charges arising out of an Owner's early termination of its Owner-Contractor Contract; charges for supplemental training requested by Owners and provided by Contractor; and time and material charges payable by Owner for the replacement of parts and maintenance-related labor where Owner elected not to receive optional maintenance offered by Contractor.

#### **6.4 Deployment of Taxicab Systems**

The TLC shall select a Sign-Up Deadline and a Compliance Date that are at least sixty (60) days apart. Contractor shall use its Best Efforts to install (on or before the Compliance Date) all Taxicab Systems for which Contractor receives orders under Owner-Contractor Contracts by the Sign-Up Deadline. If, however, Contractor receives orders for more than three-thousand (3,000) Taxicab Systems as of the Sign-Up Deadline, Contractor may, upon prior written approval of the TLC and for the benefit of Contractor and Owners who placed orders with Contractor, extend the Compliance Date for each Taxicab receiving such Taxicab System to the date occurring after the original Compliance Date that each such Taxicab is due for inspection at the TLC's safety and emissions facility under the TLC's regulations, rules or directives (*i.e.*, the new Compliance Date will be the inspection date occurring immediately following the original Compliance Date).

#### **6.5 Disclosure of Medallion Agent Arrangements**

The Parties acknowledge that Contractor may contract directly with Medallion Agents, who each represent one or more Owners. In order for the TLC to effectively monitor the Taxicab Technology Enhancement Program, Contractor shall notify the TLC of all arrangements (including written and oral agreements) entered into by and between Contractor and any Medallion Agent in connection with the Taxicab Technology Enhancement Program (including any written documentation evidencing such arrangements). The notice should (a) identify the legal name of the applicable Medallion Agent, (b) describe the benefits or other consideration sought by the Medallion Agent or provided to such Medallion Agent by Contractor, and (c) provide any written documentation evidencing such arrangements.

## **7 SERVICE LEVEL MANAGEMENT**

### **7.1 Service Levels**

#### **7.1.1 Compliance with Service Levels**

The Services and the System will comply with Attachment SLA (Service Levels). Contractor will develop and implement appropriate processes, procedures, Tools and other Software and Services to attain and maintain the levels of quality, productivity, timeliness and efficiency set forth in Attachment SLA (Service Levels) and elsewhere in this Agreement throughout the Term, regardless of whether the Services or portion of the System is provided, managed, operated or maintained by Contractor or Contractor Agents.

#### **7.1.2 Performance Failures**

Contractor recognizes that its failure to meet a Service Level may have a material adverse impact on the TLC's operations and those of its constituents and that the damage from such failure is not susceptible of precise determination. Accordingly, if Contractor experiences a Performance Failure, the affected Owners shall receive the Performance Credits specified in Attachment SLA (Service Levels). The Performance Credits shall not limit the TLC's right to recover, in accordance with this Agreement, other damages incurred by the TLC as a result of such failure. If a Performance Failure constitutes a Critical Performance Failure or otherwise rises to the level of a material breach of this Agreement, the TLC may also avail itself of the remedies described in Section 9.3.1 (Termination for Cause). This Section 7.1.2 shall not apply to the extent that a Performance Failure is caused by (a) the TLC's wrongful action or inaction, breach of this Agreement or failure to perform the TLC responsibilities expressly set forth in the Procedures Manual, or violation of law, (b) the Owner's, Driver's or any Medallion Agent's wrongful action or inaction, breach of the applicable Owner-Contractor Contract, or violation of law, or (c) circumstances that constitute a *force majeure* event under this Agreement.

#### **7.1.3 Public Acknowledgement of Performance Failures**

Contractor will join the TLC in press releases and press conferences, and at public and private meetings (e.g., with the New York City taxicab industry or the City) if one (1) or more Performance Failures materially and adversely affect the availability and performance of the Taxicab System. Contractor expressly agrees not to minimize or seek to avoid taking appropriate responsibility for such problems. This Section 7.1.3 shall not apply to the extent that a Performance Failure is caused by (a) the TLC's wrongful action or inaction, breach of this Agreement or failure to perform the TLC responsibilities expressly set forth in the Procedures Manual, or violation of law, (b) the Owner's, Driver's or any Medallion Agent's wrongful action or inaction, breach of the applicable Owner-Contractor Contract, or violation of law, or (c) circumstances that constitute a *force majeure* event under this Agreement.